

Message Text

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STADIS////////////////////////////////////

C O R R E C T E D C O P Y - ARTICLE 10 LINE ONE OMITTED

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STADIS

E.O. 11652: N/A

TAGS: SHUM, BR

SUBJECT: HUMAN RIGHTS REPORT ON BRAZIL

REFS: A) STATE 242026, B) BRASILIA 8455

1. AS EMBASSY IS AWARE, UNCLASSIFIED HUMAN RIGHTS REPORTS
ON INDIVIDUAL COUNTRIES WILL ACCOMPANY THE CONGRESSIONAL
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PRESENTATION DOCUMENT FOR SECURITY ASSISTANCE WHEN IT GOES
TO THE HILL SOMETIME EARLY NEXT YEAR. THE EXACT DATE WILL
BE DETERMINED BY THE NEXT ADMINISTRATION. PRESENT
SCHEDULE CALLS FOR PRINTING OF THE REPORTS ON JANUARY 15.

2. TEXT OF AGREED ARA PAPER ON BRAZIL, AN UPDATED VERSION
OF REPORT DISCUSSED IN REFTELS, IS TRANSMITTED FOR EMBASSY
INFORMATION AND ANY COMMENTS. BECAUSE OF SHORT TIME
FRAME, DEPARTMENT REQUESTS EMBASSY COMMENTS BY IMMEDIATE.

3. BEGIN TEXT:

I. POLITICAL SITUATION

SINCE 1964, BRAZIL'S GOVERNMENT HAS BEEN UNDER THE ULTIMATE CONTROL OF THE MILITARY. WHEN GENERAL (RET.) ERNESTO GEISEL ASSUMED THE PRESIDENCY IN EARLY 1974, HE PUBLICLY COMMITTED HIS ADMINISTRATION TO A GRADUAL RELAXATION OF THE STRICT CENTRALIZED CONTROLS OVER POLITICAL AND CIVIL LIBERTIES INTRODUCED SINCE THE 1964 "REVOLUTION." LIBERALIZATION HAS BEEN REAL, BUT GRADUAL IN THE FACE OF OPPOSITION FROM CONSERVATIVE ELEMENTS -- MOST NOTABLY WITHIN THE VARIOUS SECURITY ORGANIZATIONS -- WHO CITE A CONTINUING SECURITY THREAT AS A BASIS FOR LIMITING POLITICAL FREEDOMS.

THE OFFICIALLY RECOGNIZED OPPOSITION PARTY MADE A STRONG SHOWING IN THE NOVEMBER 1974 CONGRESSIONAL ELECTIONS AND HAS BECOME INCREASINGLY INCLINED TO SPEAK OUT ON HUMAN RIGHTS ABUSES AND TO QUESTION THE GOVERNMENT'S ACTIONS IN FOREIGN AND DOMESTIC AFFAIRS. THIS PAST NOVEMBER THE GOVERNMENT PARTY WON AN OVERALL MAJORITY OF THE TOTAL POPULAR VOTE AND A SUBSTANTIAL NUMBER OF MUNICIPALITIES; THE OPPOSITION PARTY CARRIED STRONG MAJORITIES IN MOST OF THE MAJOR METROPOLITAN CENTERS. THE ELECTIONS WERE HELD WITHOUT ANY REPORTED MAJOR DISTURBANCES.

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DURING 1975, POLITICAL ARRESTS AND REPORTS OF ABUSES INCREASED IN SAO PAULO AND OTHER BRAZILIAN CITIES IN THE AFTERMATH OF THE DISCOVERY OF BRAZILIAN COMMUNIST PARTY PRINTING PRESSES AND CLAIMS OF COMMUNIST INFILTRATION INTO STATE GOVERNMENTS AND MILITIAS.

IN JANUARY 1976, FOLLOWING THE HIGHLY PUBLICIZED DEATHS OVER A PERIOD OF SEVERAL MONTHS OF TWO PRISONERS IN THE CUSTODY OF THE II ARMY SECURITY FORCES IN SAO PAULO, PRESIDENT GEISEL REMOVED THE II ARMY'S COMMANDING GENERAL. A CONSIDERABLE NUMBER OF PERSONNEL CHANGES FOLLOWED IN THE SAO PAULO COMMAND AND ELSEWHERE IN THE SECURITY STRUCTURE AND REPORTS OF POLITICAL PRISONERS ABUSE IMMEDIATELY DECLINED.

II. LEGAL SITUATION

THE CONSTITUTION OF 1967, AS REVISED EXTENSIVELY IN 1969, INCLUDES SUCH INTERNATIONALLY RECOGNIZED LEGAL GUARANTEES AND HUMAN RIGHTS PROVISIONS AS HABEAS CORPUS, EQUALITY BEFORE THE LAW, FREEDOM OF CONSCIENCE, FREEDOM OF POLITICAL AND PHILOSOPHICAL CONVICTIONS, INVIOABILITY OF THE HOME, INVIOABILITY OF COMMUNICATIONS, FREEDOM FROM ARBITRARY ARREST, ASSURANCE OF FULL DEFENSE, FREEDOM OF PEACEFUL

ASSEMBLY.

THESE LEGAL GUARANTEES HAVE BEEN WEAKENED, HOWEVER, BY DECREE LAWS AND BY "INSTITUTIONAL ACTS" PROMULGATED UNILATERALLY BY THE EXECUTIVE BRANCH. THESE EXECUTIVE FIATS INCLUDE DECREE LAW 477, PROVIDING FOR THE REMOVAL FROM UNIVERSITY ACTIVITY OF ANYONE DEEMED GUILTY OF PROSCRIBED POLITICAL ACTIVITY; THE NATIONAL SECURITY LAW (DECREE LAW 898) INVOLVING THE TREATMENT OF THOSE SUSPECTED OF SPECIFIED ACTS AGAINST THE NATIONAL SECURITY; AND INSTITUTIONAL ACT NO. 5, WHICH GIVES THE PRESIDENT THE POWER TO CLOSE LIMITED OFFICIAL USE
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THE CONGRESS, INTERVENE IN STATES OR MUNICIPALITIES, REMOVE ELECTED OFFICIALS FROM OFFICE, AND DEPRIVE PERSONS OF THEIR POLITICAL RIGHTS FOR TEN YEARS (AN ACT KNOWN AS "CASSATION"). (DURING THE GEISEL ADMINISTRATION, IA 5 AUTHORITY HAS BEEN USED PRINCIPALLY TO "CASSATE" INDIVIDUAL MEMBERS OF THE STATE AND FEDERAL LEGISLATURES.)

THE JURIDICAL STATUS OF THESE ACTS IS COMPLICATED BY ARTICLE 181 IN THE SECTION OF THE CONSTITUTION ENTITLED "GENERAL AND TRANSITORY PROVISIONS", WHICH APPROVES AND EXCLUDES FROM JUDICIAL REVIEW ALL MEASURES TAKEN BY THE EXECUTIVE UNDER THESE AND SUPPLEMENTARY ACTS SINCE 1964. IN ADDITION, ARTICLE 182 DECLARES SPECIFICALLY THAT INSTITUTIONAL ACT NO. 5 OF DECEMBER 1968 AND THE OTHER ACTS ISSUED SUBSEQUENTLY, CONTINUE IN FORCE. THUS, WHILE THESE MEASURES ARE CONSIDERED "EXCEPTIONAL," THEY ARE SANCTIONED BY THE CONSTITUTION.

THE CONSTITUTION ALSO PROVIDES FOR THE DECREE OF A STATE OF SIEGE BY THE PRESIDENT IN CERTAIN SITUATIONS, BUT THIS POWER HAS NOT BEEN USED.

III. OBSERVANCE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS

A. INTEGRITY OF THE PERSON

ARTICLE 3: SOME INFRINGEMENTS BY THE GOVERNMENT UPON THE RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON CONTINUE TO BE REPORTED.

ARTICLE 5: POLITICAL DETAINEES AND OTHERS ACTING IN THEIR BEHALF HAVE CHARGED THE GOVERNMENT WITH TORTURE, CRUEL, INHUMAN AND DEGRADING PUNISHMENT. THESE ACCUSATIONS, INCLUDING DETAILED EXCERPTS OF DEPOSITIONS BY THE DETAINEES, HAVE BEEN PUBLICIZED IN THE MEDIA IN BRAZIL
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AND OTHER COUNTRIES. THE GOVERNMENT HAS, IN SOME INSTANCES, LAUNCHED INQUIRIES INTO REPORTS OF ABUSES. CORRECTIVE ACTIONS HAVE INCLUDED JUDICIAL INDICTMENTS AND IN SOME INSTANCES REMOVAL FROM OFFICE OF PERSONS RESPONSIBLE FOR THE MISTREATMENT OF ALLEGED SUBVERSIVES. SINCE JANUARY 1976, MOREOVER, HUMAN RIGHTS ADVOCATES WITHIN AND OUTSIDE BRAZIL HAVE STATED IN PUBLIC REPORTS AND INTERVIEWS THAT PERSONS ARRESTED IN SECURITY CASES ARE FOR THE MOST PART NOT BEING SUBJECTED TO TORTURE OR HARSH CONDITIONS OF INTERROGATION OR CONFINEMENT; FEW CHARGES OF ABUSE HAVE ARISEN IN THIS TIME PERIOD INVOLVING POLITICAL DETENTION.

"DEATH SQUAD" ACTIVITIES (A FORM OF VIGILANTISM WHICH GREW TO ALARMING PROPORTIONS IN RIO DE JANEIRO IN THE LATE 1960'S AND SPREAD ELSEWHERE), ON THE OTHER HAND, HAVE RECENTLY INCREASED AFTER A HIATUS, DESPITE GOVERNMENT COUNTERMEASURES. THESE GROUPS, CLANDESTINE ASSOCIATIONS OF OFF-DUTY POLICEMEN, PREY MOSTLY ON COMMON CRIMINALS; THEIR VICTIMS SHOW EVIDENCE OF TORTURE.

CONSERVATIVE ELEMENTS, BOTH INSIDE AND OUT OF THE GOVERNMENT, HAVE GROWN RESTIVE UNDER THE GRADUAL LIBERALIZATION CARRIED OUT BY PRESIDENT GEISEL. A RIGHT WING EXTREMIST GROUP, THE BRAZILIAN ANTI-COMMUNIST ALLIANCE (AAB) HAS CLAIMED CREDIT FOR THE RECENT KIDNAPPING AND BEATING OF A CATHOLIC BISHOP AND FOR A SERIES OF BOMBINGS DIRECTED AGAINST THE MEDIA AND THE BRAZILIAN BAR ASSOCIATION.

OTHER MEMBERS OF THE CATHOLIC CLERGY HAVE BEEN THE VICTIMS IN RECENT MONTHS OF ACTIONS DIRECTLY ATTRIBUTABLE TO GOVERNMENT AUTHORITIES: SEVERAL STATE POLICE OFFICERS MURDERED A PRIEST WHO PROTESTED THE TORTURE OF A WOMAN SUSPECT; AND THE ARMY DETAINED A PRIEST (LATER CHURCH REPORTS CLAIM THAT HE WAS TORTURED) INVOLVED IN A SQUATTER-ARMY CONFRONTATION IN THE AMAZON. IN A RECENT PASTORAL LETTER, THE BRAZILIAN COUNCIL OF BISHOPS

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DENOUNCED THE EXTREMIST AND GOVERNMENT ABUSES AGAINST THE CLERGY AND SCORED THE CORRECTIVE MEASURES TAKEN BY THE GOVERNMENT.

THUS, WHILE DETAINEES IN SECURITY CASES HAVE EXPERIENCED IMPROVED TREATMENT, THERE IS NO EVIDENCE THAT THERE HAS BEEN COMPARABLE IMPROVEMENT IN OTHER LAW ENFORCEMENT ACTIVITIES. NEVERTHELESS, THE ISSUE OF POLICE ABUSES -- A CONDITION PRE-DATING THE 1964 REVOLUTION -- HAS DRAWN ATTENTION AT THE HIGHEST GOVERNMENT LEVELS; PRESIDENT

GEISEL RECENTLY WAS QUOTED BY A CATHOLIC ARCHBISHOP CRITICAL OF THE GOVERNMENT AS SAYING THAT THE ARMY AND STATE POLICE ORGANIZATIONS HAVE ORDERS BANNING TORTURE AND OTHER FORMS OF MISTREATMENT.

ARTICLE 8: THK R;GHT TO OBTAIN LEGAL REDRESS FOR VIOLATIONS OF THEIR RIGHTS IS, IN PRACTICAL TERMS, NOT AVAILABLE TO POLITICAL DETAINEES.

ARTICLE 9: CASES OF ARBITRARY ARREST AND DETENTION HAVE OCCURRED. ARMY COMMANDERS HAVE RECENTLY ADOPTED THE PRACTICE, HOWEVER, OF ISSUING PUBLIC STATEMENTS WHICH LIST THE PEOPLE ARREST AND, IN SOME CASES, CONTAIN ASSURANCES THAT FULL LEGAL GUARANTEES WILL BE RESPECTED.

ARTICLE 10: FAIR HEARINGS BY IMPARTIAL TRIBUNALS ARE NOT CONSISTENTLY AVAILABLE TO POLITICAL DETAINEES. THOSE PERSONS FORMALLY CHARGED WITH SECURITY OFFENSES RECEIVE A HEARING IN A MILITARY COURT. ORGANIZATIONS SUCH AS THE BRAZILIAN BAR ASSOCIATION, THE JOURNALISTS' ASSOCIATION, THE NATIONAL COUNCIL OF CATHOLIC BISHOPS, AND BRAZIL'S MAJOR OPPOSITION PARTY, THE BRAZILIAN DEMOCRATIC MOVEMENT (MDB) HAVE MADE RECOMMENDATIONS TO THE CONGRESS AND THE EXECUTIVE REGARDING HUMAN RIGHTS ABUSES.

ARTICLE 11: SOME PERSONS DETAINED FOR POLITICAL LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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OFFENSES HAVE NOT BEEN BROUGHT TO TRIAL. A MILITARY TRIBUNAL EXERCISES LEGAL JURISDICTION OVER CASES WHICH ARE TRIED AND, IN THOSE INSTANCES, NORMAL MILITARY DUE PROCESS GUARANTEES ARE GENERALLY OBSERVED. OFFICIAL ACTIONS CARRIED OUT UNDER THE AUTHORITY OF THE NATIONAL SECURITY LAW ARE NEVERTHELESS NOT ALWAYS SUBJECT TO THESE PROVISIONS, NOR TO SUBSEQUENT REVIEW.

B. OTHER IMPORTANT FREEDOMS

THE GOVERNMENT OFFICIALLY DISCOURAGES DISCRIMINATION BASED UPON SEX, RACE, OCCUPATION OR RELIGION. NEVERTHELESS, SOME BRAZILIANS CLAIM THAT A CERTAIN DEGREE OF RACIAL DISCRIMINATION DOES EXIST. MARGINAL ECONOMIC GROUPS, INCLUDING INDIAN TRIBES IN THE AMAZON REGION, EXPERIENCE LIMITED ACCESS TO CONSTITUTIONAL GUARANTEES.

WITH THE EXCEPTION OF TRAVEL CONTROL MEASURES DICTATED BY ECONOMIC AUSTERITY, THE GOVERNMENT HAS NOT PLACED LARGE SCALE RESTRICTIONS ON MOVEMENT INTO, OUT OF, AND WITHIN THE COUNTRY; IN THE CASE OF THOSE RESTRICTIONS THAT HAVE BEEN IMPOSED ON THE GROUNDS OF NATIONAL SECURITY

OR THE PROTECTION OF NATIONAL TERRITORY, THE NUMBER OF INDIVIDUALS AFFECTED HAS BEEN RELATIVELY SMALL.

OFFICIAL GOVERNMENT POLICY SUPPORTS THE RIGHT TO OWN PROPERTY IN ACCORDANCE WITH ESTABLISHED LAW. FREEDOM OF RELIGION IS OFFICIALLY RECOGNIZED. POLITICAL PHILOSOPHIES CONSIDERED SUBVERSIVE MAY BE DEALT WITH UNDER AUTHORITY OF THE NATIONAL SECURITY LAW. GOVERNMENT CONCERN FOR NATIONAL SECURITY AND MAINTAINING ORDER IMPOSE LIMITATIONS THE RIGHT OF ASSEMBLY.

MEDIA CENSORSHIP CONTINUES, THOUGH IT IS NOW AT ITS LOWEST LEVEL SINCE THE MID-SIXTIES. THERE IS ACTIVE LIMITED OFFICIAL USE
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PUBLIC DEBATE WITHIN BRAZIL OVER HUMAN RIGHTS, POLITICAL LIBERALIZATION AND INSTITUTIONALIZATION OF THE PRESENT SYSTEM.

IV. OTHER HUMAN RIGHTS REPORTING

IN 1972 AMNESTY INTERNATIONAL PUBLISHED A REPORT ON ALLEGATIONS OF TORTURE IN BRAZIL. AN UPDATED VERSION WAS PUBLISHED IN 1976. THIS LENGTHY REPORT PROVIDES A BACKGROUND EXAMINATION OF CONSTITUTIONAL AND EXECUTIVE PROVISIONS CONCERNING NATIONAL SECURITY, AS WELL AS TRIAL AND POLICE ENFORCEMENT PROCEDURES. ALSO DISCUSSED ARE TORTURE TECHNIQUES AND ACCOUNTS OF REPORTED TORTURE INCIDENTS. INCLUDED AS APPENDICES ARE LISTS OF REPORTED TORTURE VICTIMS AND ALSO OF THOSE ALLEGEDLY RESPONSIBLE FOR COMMITTING ABUSES.

AMNESTY'S ANNUAL REPORTS FOR 1974-1975 AND 1975-1976 CONTAIN SECTIONS ON POLITICAL DEVELOPMENTS AND ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS IN BRAZIL DURING THIS TWO AND A HALF YEAR PERIOD. THE 1974-75 REPORT SUMMARIZES THE ORGANIZATION'S 1972 STUDY AND STATES AS ONE OF ITS CONCLUSIONS THAT TORTURE IS WIDESPREAD AND CONSTITUTES AN ADMINISTRATIVE PRACTICE. THE 1975-76 REPORT CITES ADDITIONAL CASES OF TORTURE AS EVIDENCE THAT THE PRACTICE CONTINUED INTO THAT REPORTING PERIOD.

THE ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS FOR 1973 STATED THAT EVIDENCE GATHERED AND INCLUDED IN THE REPORT LED TO THE PERSUASIVE PRESUMPTION THAT IN BRAZIL SERIOUS CASES OF TORTURE, ABUSE AND MALTREATMENT HAD OCCURRED. THE 1975 ANNUAL REPORT LISTED FIVE NEW CASES THE COMMISSION HAS TAKEN UP INVOLVING CHARGES OF ARBITRARY ARREST AND DETENTION.

DURING 1975 THE INTERNATIONAL COMMITTEE OF THE RED CROSS

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CARRIED OUT, AT THE INVITATION OF THE BRAZILIAN GOVERNMENT, AN INVESTIGATION OF BRAZILIAN PRISONS, INCLUDING SOME HOLDING POLITICAL PRISONERS. THEIR FINDINGS HAVE BEEN SHARED WITH THE HOST GOVERNMENT, BUT OTHERWISE HAVE NOT BEEN DISTRIBUTED.

THE REVIEW OF THE INTERNATIONAL COMMISSION OF JURISTS, JUNE 1976, DISCUSSED SPECIFIC CASES OF REPORTS OF TORTURE WHICH SURFACED DURING 1975-76, ALTHOUGH AS THE STUDY INDICATED, SOME STEPS HAD APPEARED TO HAVE BEEN TAKEN TO REDUCE THE ABUSES.

FREEDOM HOUSE LISTS BRAZIL AS "PARTIALLY FREE."

ROBINSON

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